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Robert Gentile

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EXAMINER

CHU, GABRIEL L

ART UNIT

PAPER NUMBER

2114

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,997

Applicant(s)

GENTILE, ROBERT

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: element 30, and otherwise, figure 3 in specificity is not addressed. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-14, 24-48 rejected under 35 U.S.C. 102(e) as being anticipated by

US 6314455 to Cromer et al. Referring to claim 1, Cromer et al. discloses during one

boot cycle, determining whether a BIOS of a computer system is corrupt (From figure 4, 412.);

continuing with a normal boot if said BIOS is not corrupt (From figure 4, 410.);

if said BIOS is corrupt: initializing components in a boot block of said computer system sufficient to establish a communications connection with a recovery server, locating said recovery server, communicating to said recovery server by sending system information to said recovery server in a request for an uncorrupted BIOS (From figure 4, 412, 422.);

in response to said request to said recovery server, downloading an uncorrupted version of said BIOS from said recovery server based on said system information (From figure 4, 424.);

programming said uncorrupted BIOS onto said computer system's BIOS storage area (From figure 4, 426.);

2. Referring to claims 2 and 33, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems

104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

3. Referring to claims 3, 11, 26, and 34, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, “FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

4. Referring to claims 4, 12, 27, 35, 43, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a wide area network, connecting over a WAN is notoriously well known in the art. Examiner takes official notice for wide area networks. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over a WAN because it provides connectivity over a wide geographic area. Further, from line 58 of column 3, “A “network” may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the

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invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

5. Referring to claims 5, 9, 13, 28, 31, 36, 39, 44, 47, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over the internet, connecting over the internet is notoriously well known in the art. Examiner takes official notice for the internet. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over the internet because it provides up to global connectivity. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel.

However, the preferred embodiment is implemented utilizing an Ethernet network."

6. Referring to claims 6, 37, 45, although Cromer et al. does not specifically disclose one of said components is a modem, including a modem in a computer system is notoriously well known in the art. Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to include a modem in a computer system because it allows a computer to access a communications medium, such as a cable network or telephone lines, for data communications. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be

implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

7. Referring to claim 7, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a direct dial connection, connecting a computer by dialing into a network is notoriously well known in the art. Examiner takes official notice for dial-up connections. A person of ordinary skill in the art at the time of the invention would have been motivated to use dial-up a connection to connect to a server because he or she would have been able to connect wherever there is a telephone connection. Further, from line 58 of column 3, “A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

8. Referring to claims 8, 30, 38, 46, although Cromer et al. does not specifically disclose said computer system connects to said recovery server through an internet service provider, connecting to a server over an ISP is notoriously well known in the art. Examiner takes official notice for ISPs. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server using an ISP because ISPs provide access to the internet, a global communications network that interconnects networks of various design. Further, from line 58 of column 3, “A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein

may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

9. Referring to claim 10, Cromer et al. discloses during one boot cycle, determining whether a computer system BIOS is corrupt (From figure 4, 412.); if said BIOS is corrupt: receiving at a server a request for an uncorrupted version of said BIOS transmitted by a computer system with a corrupted version of said BIOS detected during startup (Figure 4, 412, 422.); in response to said request, transmitting an uncorrupted version of said BIOS to said computer system (Figure 4, 424.).

10. Referring to claim 14, although Cromer et al. does not specifically disclose said server and said computer system are connected through said computer system's modem, connecting through a modem is notoriously well known in the art. Examiner takes official notice for a modem. A person of ordinary skill in the art at the time of the invention would have been motivated to connect using a modem because modems are devices of extremely common inclusion in modern day computer systems, designed for data communications with another computer system. Further, from line 58 of column 3, “A “network” may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

11. Referring to claim 24, Cromer et al. discloses a computer system, said computer system comprising a processor, a BIOS recovery program, a BIOS storage area containing said BIOS, RAM, a first communications system and a chipset to control the flow of data between the processor, the motherboard bus and the RAM (Figure 2.);

and a recovery server, said recovery server comprising a processor, a storage medium, and a second communications system (Figure 1, 100, wherein the server is capable of processing, storing, and communicating.);

wherein said processor of said computer system, in response to detecting a corrupt version of said BIOS detecting during startup and during the same boot cycle in which the corrupt version of said BIOS was detected, executes said BIOS recovery program to: initialize in a boot block of said computer system, said chipset, RAM, and first communications system; locate said recovery server, communicate to said recovery server through said first and second communications systems by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request with said recovery server, download from said recovery server an uncorrupted version of said BIOS based on said system information (Figure 4, 424.);

store said uncorrupted version of said BIOS into said BIOS storage area (Figure 4, 426.).

12. Referring to claim 25, Cromer et al. discloses said first and second communication system are network cards (From line 45 of column 3, "FIG. 1 illustrates

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a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

13. Referring to claim 29, although Cromer et al. does not specifically disclose said first and second communication systems are modems, using a modem in a computer to connect to another computer with a modem is notoriously well known in the art.

Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to connect using a modem because modems are devices of extremely common inclusion in modern day computer systems, designed for data communications with another computer system. Further, from line 58 of column 3, “A “network” may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

14. Referring to claim 32, Cromer et al. discloses a computer system, said computer system comprising a processor, a bus, a BIOS recovery program, a BIOS storage area

containing said BIOS, RAM, and a first communications system and a chipset to control the flow of data between the processor, the bus and the RAM (Figure 2.);

wherein said computer system's processor, in response to detecting a corrupt version of said BIOS during startup and during the same boot cycle during which the corrupt version of said BIOS was detected, executes said BIOS recovery program to: initialize in a boot block of said chipset of said computer system, RAM, and said first communications system, locate a recovery server, communicate to said recovery server through said first communications system by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request to said recovery server, download from said recovery server an uncorrupted version of said BIOS based on said system information (Figure 4, 424.);

store said uncorrupted version of BIOS into said BIOS storage area (Figure 4, 426.).

15. Referring to claim 40, Cromer et al. discloses a recovery server, said recovery server comprising a processor, a memory containing an uncorrupted version of a BIOS in a boot block for a computer system; and a first communications system (Figure 1, 100, wherein server is capable of processing, stores at least a flash image for transmission, and is capable of communicating.);

wherein said recovery server, in response to receiving a request transmitted by said computer system during the same boot cycle in which a corrupted version of said BIOS is detected (Figure 4, 412.),

is configured to transmit said uncorrupted version of said BIOS to said computer system (Figure 4, 412, 422, 424.).

16. Referring to claim 41, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

17. Referring to claim 42, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

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18. Referring to claim 48, Cromer et al. discloses a computer system, said computer system comprising a BIOS and components sufficient in a boot block to enable recovery of an uncorrupted BIOS from a remote server (Figure 2.);

wherein said computer system, in response to detecting a corrupt version of said BIOS during startup and during the same boot cycle in which the corrupt version of said BIOS was detected, (Figure 4, 412.),

is configured to operate said components to: connect to communicate to a remote server by sending system information to said remote server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

as a result of said request with said remote server, receive an uncorrupted version of said BIOS from said remote server (Figure 4, 424.);

store said uncorrupted version of said BIOS (Figure 4, 426.).

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. **Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki.** Referring to

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claim 15, Cromer et al. discloses during one boot cycle, checking whether a BIOS of said computer system is corrupt (Figure 4, 412.);

continuing with a normal boot if said BIOS is not corrupt (Figure 4, 410.);

if said BIOS is corrupt: initializing components in a boot block of said computer system sufficient to establish a communications connection with a recovery server, locating a recovery server, communicating to said recovery server by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request to said recovery server, transmitting an uncorrupted version of said BIOS; receiving said uncorrupted version of said BIOS at said computer system (Figure 4, 424.);

program said uncorrupted version of said BIOS onto a BIOS storage area of said computer system (Figure 4, 426.).

Although Cromer et al. do not specifically disclose that utility software can be transmitted to the client and executed to program the BIOS, sending a flash update utility along with the flash update is known in the art. From Aoki, "A host station 1 transmits an update program obtained by previously changing the operation and the version of the program to the base station 2." A person of ordinary skill in the art at the time of the invention would have been motivated to send a flash update utility because, from Aoki, "an update program [is] obtained by previously changing the operation."

21. Referring to claim 16, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a

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data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

22. Referring to claim 17, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, “FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

23. Referring to claim 18, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a wide area network, connecting over a WAN is notoriously well known in the art. Examiner takes official notice for wide area networks. A person of ordinary skill in the art at the time of the

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invention would have been motivated to connect to a server over a WAN because it provides connectivity over a wide geographic area. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

24. Referring to claims 19 and 23, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over the internet, connecting over the internet is notoriously well known in the art. Examiner takes official notice for the internet. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over the internet because it provides up to global connectivity. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

25. Referring to claim 20, although Cromer et al. does not specifically disclose one of said components is a modem, including a modem in a computer system is notoriously well known in the art. Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to include a modem in a computer system because it allows a computer to access a

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communications medium, such as a cable network or telephone lines, for data communications. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

26. Referring to claim 21, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a direct dial connection, connecting a computer by dialing into a network is notoriously well known in the art. Examiner takes official notice for dial-up connections. A person of ordinary skill in the art at the time of the invention would have been motivated to use dial-up a connection to connect to a server because he or she would have been able to connect wherever there is a telephone connection. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

27. Referring to claim 22, although Cromer et al. does not specifically disclose said computer system connects to said recovery server through an internet service provider, connecting to a server over an ISP is notoriously well known in the art. Examiner takes official notice for ISPs. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server using an ISP because ISPs provide

access to the internet, a global communications network that interconnects networks of various design. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

28. Claims 49, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. further in view of US 5319519 to Sheppard et al.

Referring to claims 49, 50, Cromer discloses, in the background, connecting to a conventional recovery source; downloading an uncorrupted version of said BIOS from said conventional recovery source; programming said uncorrupted BIOS onto said computer system's BIOS storage area; and rebooting said computer system, wherein said conventional recovery source is a removable disk (From line 4 of column 2, "POST and BIOS are both typically stored as a single flash image in a storage device such as a flash memory. This image is commonly called the "boot code". If the flash image of POST and BIOS is corrupted, the boot of the system will not be able to be completed. To recover from a defective flash image error, known systems include a boot block. The boot block is storage within the flash memory which includes a small segment of code sufficient to bring the system up, and to read a recovery image from a floppy drive. A diskette must be inserted into the floppy drive which includes a good copy of the flash image. The code stored in the boot block is not typically updated. In order for the system to boot from the boot block, a technician must remove the cover of the computer

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system, and physically move a jumper coupled to the flash memory. The jumper is utilized to indicate whether a boot will be attempted from the boot block or the main flash memory. The technician then must replace the cover, insert an appropriate diskette in the floppy drive, and restart the computer. The computer will then attempt to boot from the boot block.”).

Although, clearly, this passage refers to procedures taken prior to the availability of a recovery server, a person of ordinary skill in the art at the time of the invention, in all likelihood, would have been able to understand that if remote data was unavailable (located), and that if the data is still required, local data must be used instead. An example of this common understanding among people of ordinary skill in the art is shown by Sheppard, from line 35 of column 2, “When networks or network software are unavailable, the person must take his data base with him. He can do this by disconnecting his hard disk drive from his PC, transporting his hard disk drive with him, and then reconnecting the disk drive to a computer located at the remote site. Alternatively, the person can up-load his data base to a large number of floppy disks one at a time, transport the floppy disks to the remote site, and then down-load the data base from the floppy disks one at a time onto a computer located at the remote site. Unfortunately, both procedures are cumbersome and time-consuming.” A person of ordinary skill in the art at the time of the invention would have been motivated to prepare for the unavailability of a remote data source because, from Sheppard, “When networks or network software are unavailable, the person must take his data base with him.”

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29. Claims 51, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki as applied to claim 15 above, and further in view of US 5319519 to Sheppard et al. Referring to claims 51, 52, Cromer discloses, in the background, connecting to a conventional recovery source; downloading an uncorrupted version of said BIOS from said conventional recovery source; programming said uncorrupted BIOS onto said computer system's BIOS storage area; and rebooting said computer system, wherein said conventional recovery source is a removable disk (From line 4 of column 2, "POST and BIOS are both typically stored as a single flash image in a storage device such as a flash memory. This image is commonly called the "boot code". If the flash image of POST and BIOS is corrupted, the boot of the system will not be able to be completed. To recover from a defective flash image error, known systems include a boot block. The boot block is storage within the flash memory which includes a small segment of code sufficient to bring the system up, and to read a recovery image from a floppy drive. A diskette must be inserted into the floppy drive which includes a good copy of the flash image. The code stored in the boot block is not typically updated. In order for the system to boot from the boot block, a technician must remove the cover of the computer system, and physically move a jumper coupled to the flash memory. The jumper is utilized to indicate whether a boot will be attempted from the boot block or the main flash memory. The technician then must replace the cover, insert an appropriate diskette in the floppy drive, and restart the computer. The computer will then attempt to boot from the boot block.").

Although, clearly, this passage refers to procedures taken prior to the availability of a recovery server, a person of ordinary skill in the art at the time of the invention, in all likelihood, would have been able to understand that if remote data was unavailable (located), and that if the data is still required, local data must be used instead. An example of this common understanding among people of ordinary skill in the art is shown by Sheppard, from line 35 of column 2, "When networks or network software are unavailable, the person must take his data base with him. He can do this by disconnecting his hard disk drive from his PC, transporting his hard disk drive with him, and then reconnecting the disk drive to a computer located at the remote site. Alternatively, the person can up-load his data base to a large number of floppy disks one at a time, transport the floppy disks to the remote site, and then down-load the data base from the floppy disks one at a time onto a computer located at the remote site. Unfortunately, both procedures are cumbersome and time-consuming." A person of ordinary skill in the art at the time of the invention would have been motivated to prepare for the unavailability of a remote data source because, from Sheppard, "When networks or network software are unavailable, the person must take his data base with him."

Response to Arguments

30. Applicant's arguments filed 30 November 2005 have been fully considered but they are not persuasive. Applicant's argument consist essentially of Applicant's reference to the amendments concerning performing steps "during one boot cycle" or

"during the same cycle". Applicant further attempts to differentiate Applicant's alleged cycle by pointing to Cromer's rebooting steps.

31. Firstly, Applicant is reminded of 37 C.F.R. 1.75 (d)(1) which states that the claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. (See 1.58(a).) The term "boot cycle" is nowhere found in the specification. Examiner turns to figures 1 and 3 in which cyclical indicators are used in conjunction with booting steps that correspond with the inventive method. Further, there is nowhere indicated (and cannot be indicated since the term "boot cycle" is not used) of what a "boot cycle" must consist. In the absence of any clear definition of such a boot cycle, Examiner interprets a boot cycle to be the booting process beginning at startup/power-on and ending with a successful boot, a broad and reasonable interpretation. Cromer clearly provides steps that meet such an interpretation.

32. However, Applicant need not take Examiner's word for this. Turning to the Microsoft Computer Dictionary (MSCD), a boot[1] is defined as "the process of starting or resetting a computer... loads and starts the computer's more complicated operating system and prepares it for use." Clearly, until a computer is successfully booted, it is not started; it is not prepared for use. MSCD also defines boot[2] as "to start or reset a computer by turning the power on, by pressing a reset button on the computer case, or by issuing a software command to restart." Supported by Applicant's inclusion of the

power-on step, clearly, a "boot cycle" may not be completed until it returns to the power on stage. Looking at Applicant's figure 1, for example, a successful boot does not occur until step 13 occurs, which may clearly occur after a reboot, step 20. A boot cycle may comprise one or more resets/reboots.

33. Simply put, there is nothing in Applicant's specification that prohibits this broad and reasonable interpretation. The only thing that could possibly support prohibiting a reboot would be figures 1 and 3, but they are not described in adequate detail so as to preclude or include such a step. For example, Applicant does not indicate a fan is turned on or off. Does it happen? Applicant does not indicate a reboot does or does not occur during Applicant's intended "boot cycle". Does it happen? These are examples of limitations that are outside the scope of consideration of Applicant's specification as filed. If Applicant considers such limitations to be patentably distinguishing, it is suggested that they be included in the specification upon filing so as to provide a clear indication of possession, and furthermore, so that they may provide support for Applicant's interpretation of claims.

34. Examiner has thoroughly read the entirety of the five paragraphs of the specification that comprise the detailed description of Applicant's invention. In view of the amendments, arguments, and remaining subject matter of those five paragraphs, Examiner believes that avenues of prosecution have been exhausted. Examiner suggests either abandoning or appealing.

Conclusion

35. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER

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